



STATE OF INDIANA

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December 8 2010

Mr. Robyn L. Emmert
230 W. Main, P.O. Box 211
Atlanta, IN 46031

Re: Informal Inquiry 10-INF-56; Town of Atlanta

Dear Ms. Emmert:

This is in response to your informal inquiry regarding the Town of Atlanta (“Town”) Town Council (“Council”). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Open Door Law (“ODL”), I.C. § 5-14-1.5-1 *et seq.*

As an initial matter, I note that many of these issues are related to those presented by you in a formal complaint, in response to which I issued *Opinion of the Public Access Counselor 10-FC-289*. I also note that because these inquiries are addressed informally, I will offer my interpretation of the legal questions presented but will refrain from making judgments regarding disputed facts or allegations of violations. Any alleged violations of the ODL should be addressed through the formal complaint process in accordance with Ind. Code § 5-14-5.

In your inquiry, you allege that the Council members gathered on September 24, 2010, in the Town Marshal’s (“Marshal”) office, “unannounced, and abruptly fired him. He was advised to turn in his equipment and leave immediately.” Several days later, during the regularly scheduled Council meeting, the Town’s attorney submitted a memorandum stating that the Council considered the Marshal suspended as of September 24, 2010. In response to questions about when the Marshal was actually suspended, the Town attorney replied that he did not know, and the three Council members did not respond. You note that litigation is pending regarding the Marshal’s termination, but you ask whether the Council’s gathering on September 24th would constitute a “meeting” under the ODL.

In response to your inquiry, Town Attorney Aaron P. Culp states that the September 24th gathering did not violate the ODL because it was an administrative function meeting held for the purpose of discussing a matter relating to the internal management of the Town’s police force. He claims that no votes were taken, no final decisions were made, and there was no resulting harm to the Marshal, you, or the public

at large. The Council suspended the Marshal without pay pending the Council's regularly scheduled meeting on September 28, 2010. At that meeting, the Council publicly discussed the Marshal's status and voted to discharge him effective immediately.

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. § 5-14-1.5-3(a). The Council is a governing body for the purposes of the ODL. I.C. § 5-14-1.5-2.

A "meeting" means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). "Public business" means any function upon which the public agency is empowered or authorized to take official action. I.C. § 5-14-1.5-2(e). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g).

Generally, the ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a). However, the requirements for posting notice do not apply when the executive of a county or the legislative body of a town (e.g., the Council, in this case) meets, if the meeting is held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. Administrative functions do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town. I.C. § 5-14-1.5-5(f)(2). Even though notice is not required, the "administrative function" meeting must be held in the public, since the notice provision of the ODL is *the only provision* that does not apply to an "administrative function" meeting. I.C. § 5-14-1.5-5(f)(2), emphasis added. Thus, as long as the Council gathered on September 24th *solely* to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit, public notice was not required. *See* I.C. § 5-14-1.5-5(f)(2). All other requirements of the ODL apply to these meetings.

In Indiana, town councils function as the legislative bodies of towns and town council presidents serve as the towns' executives. *See* I.C. § 36-5-2-2. Consequently, the ODL provided for circumstances where town councils would need to meet without notice to handle day-to-day issues in the internal management of the town. In my opinion, handling employment matters as they develop and taking preliminary actions with respect

to employees is acceptable under the administrative function exception to the ODL, provided that any final action regarding an employee's status occurs at a regular or special meeting of the council that is open to the public.

Finally, I recognize the disturbing allegations in your inquiry regarding the situation that occurred on September 24th and appreciate the input of the officers and others who contributed their testimonies regarding that gathering of the Council. For better or worse, my authority to issue advisory opinions extends only to violations of the ODL, the Access to Public Records Act, and other statutes that concern open records and meetings. I trust that any alleged improprieties in the Council's conduct during the September 24th meeting or with respect to the Marshal will be handled appropriately during the litigation that you referred to regarding those issues.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a prominent initial "A".

Andrew J. Kossack
Public Access Counselor

cc: Aaron P. Culp